Missouri Division of Credit Unions

NEWSLETTER

Volume 8, Issue 1 **January 17, 2006**

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Credit Union Name Changes Q & A

Q: Do the words "credit union" have to be at the end of a state-chartered credit union's name (for example, XYZ Credit Union)?

A: No. While state-chartered credit unions do have to have the words "credit union" in their name, they do not have to be at the end of the name. For example, a credit union can change their name to "Credit Union One" or "Credit Union of Cole County". A federal-chartered credit union has to legally have the word "federal" in front of "credit union" in their name.

However, a name change will not be approved if it is too similar to another Missouri credit union. For example, we would not approve a name change to "Credit Union of Cole County", if a credit union named "Cole County Credit Union" already existed.

Q: Does a credit union's membership have to approve the name change?

A: No. The credit union's bylaws, Article 1, Section 1.1 must be changed to reflect the name change. A credit union's Board of Directors has the authority to change this section. However, the membership's best interest should be considered when making this change. A name change can be costly and a credit union could potentially lose the value of goodwill the name has acquired over time.

Q: What is the process needed to legally change the credit union's name?

A: Typically credit union's contact our office to ensure the proposed new name will be acceptable upon submission to our office. Upon this pre-approval, the name change is submitted with a cover letter and a change to Article 1, Section 1.1 (4 original notarized copies) of the credit union's bylaws. Upon approval of the division, the bylaws are filed with the Secretary of State.

Q: How long does it take for a name change to be approved?

A: The approval of the division should take no more than a few days. However, much more lead time will be needed for the credit union's vendors. The credit union may need documented approval from our office for the sake of satisfying a vendor request.

Merger Rule

The division is currently in the process of developing a regulation regarding the mergers of Missouri state-chartered credit unions. Currently, only a law exists for mergers, whereby a rule will go into greater detail of what is required for a merger.

Among the areas that will be covered by this regulation is submission of the merger packet for approval prior to the submission to the membership, guidelines for the voting of members, and details of what needs to be disclosed to the membership.

The Credit Union Commission's approval is required before the proposed regulation can be submitted.

Bank Secrecy Act

As you have undoubtedly read, Bank Secrecy Act (BSA) compliance has become increasingly important due to the attacks of September 11, 2001. The division has been charged with examining Missouri state-chartered credit unions and reports on the results of these examinations to the Financial Crimes Enforcement Network (FinCEN).

Examining a credit union's program for compliance with BSA consists of four steps:

Risk Assessment:

Since the level of sophistication required for compliance is dependent on the level of risk in the credit union, the risk assessment is an essential starting point for developing and examining a compliance program.

The detail needed in the assessment will vary. For example, for a small, single location credit union that does not carry cash or offer services such as traveler's checks and money orders, the risk assessment may be as simple as a documented summary of the discussion by officials that states why there is a low level of risk and how their program meets that level of risk.

However, in the example of a larger, more complex credit union, they should have a document that describes each product, service, location, membership group, etc., the level of risk associated with each, what procedures are in place to mitigate the risk, and what the risk level is after mitigation.

Policies and Procedures:

Following the assessment of risk, written policies and procedures MUST be developed to address those risks identified. BSA requires the written compliance program to address the following minimum requirements:

-A system of internal controls to ensure compliance.
-Independent testing of compliance.
-Designation of a compliance officer responsible for managing BSA compliance.
-Training of all staff involved in BSA compliance.

Although each of the bulleted items must be addressed, the level of detail required for each will again be dependent on the level of risk. We have no choice but to report a violation to FinCEN, if a credit union is found to not have a written BSA policy.

Independent Review

To ensure the program meets BSA requirements, that risk is fully identified, and that procedures appropriately mitigate that risk, an independent review (or testing) is required. Regulations do not specify who must do the review, only that the reviewer (s) cannot be involved in the day-to-day compliance activities. Regulations do not specify how often the review must be completed.

The depth of the review is dependent on the amount of risk. For example, a small, non-complex institution may use the Supervisory Committee to meet this requirement. The NCUA's Compliance Self-Assessment Guide could be a tool to direct and document the review. A large, complex credit union may hire an audit firm with BSA expertise to conduct an extensive BSA audit.

Regardless of the level of risk, the reviewer(s) must be knowledgeable about BSA requirements and the credit union's compliance program. An engagement letter (or reference to a particular questionnaire or guide to be used) identifying the steps the reviewer(s) will perform is necessary. Finally, the results of the review must be documented.

Transaction Testing

Transaction testing is an important part of the independent review. The quantity and quality of the testing done may have an impact on how much, and what type of testing the examination staff will need to review.

As stated in earlier newsletters, the FFIEC BSA Examination Manual is a resource available to assist with BSA compliance. Division examiner Todd Willoughby (Kansas City) is serving as the division's BSA specialist and is available if any credit unions have questions. Simply contact the Jefferson City office and we will arrange for him or your assigned examiner to contact you. Also, the Missouri Credit Union Association's Information Services Department is available for training and answering of questions (1-800-446-3620).

Examining a credit union's program for compliance with BSA consists of four steps:

- Risk Assessment
- Policies and Procedures
- Independent Review
- Transaction Testing

Bank Secrecy Act (BSA) compliance has become increasingly important due to the attacks of September 11, 2001.

Compliance

- **Late Charges**

The division has recently fielded questions regarding acceptable late charges on consumer loans. Chapter 408.140 (3) was amended in 2004, allowing credit unions to assess a higher late charge in some instances. The statute now states "If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or fifteen dollars, whichever is **greater**, not to exceed fifty dollars…" Previously, this statute limited the same fee to five percent of each installment due or the minimum payment due or twenty-five dollars, whichever is less; except that a minimum charge of ten dollars could be made.

To illustrate the difference, the previous maximum late charge for a $600 payment was $25, due to the $25 being less than $30. Currently, the maximum late charge could be $30, due to the charge being the greater of 5% of the payment or $15.

The previous maximum late charge for a $100 installment was $10 (the minimum allowable charge). The current maximum late charge is $15 (the greater of $15 and 5% of the installment).

However, credit unions can only charge the maximum stated on each individual contract.

- **Fees for credit cards in contiguous states**

Chapter 408.145 of Missouri Law allows state-chartered credit unions to contract for, charge, and collect fees for credit cards which any lender in any contiguous states is permitted to charge by their state's statute. Credit unions choosing to charge this fee shall file a copy of the statute of the chosen contiguous state with the division. Within 30 days, the Director has to approve or disapprove of such fee.

- **Loan payment deferrals ("Skip-a-Pay promotions)**

On loans with an original amount of at least $600, and provided the borrower agrees in writing, Chapter 408.178 allows a credit union to collect a fee for allowing the borrower to defer monthly loan payments, provided the fee on each deferred period is no more than the lesser of $50 or 10 percent of the payments deferred. However, a minimum of $25 is permitted. Also, extensions cannot be made until the first loan payment is collected on any loan. There is no limitation on how many payments can be deferred or how often they can be deferred.

Compliance Issues:

- **Late Charges**
- **Fees for credit cards in contiguous states**
- **Loan payment deferrals ("Skip-a-Pay promotions)**

5300 Call Reports

The 5300 Call Reports for the year ending December 31, 2005 are due on or before January 23, 2006. Please note that all errors must be resolved before a transmission file can be created. Additionally, a comment is now required for all warnings. If you have any questions, please contact our office as soon as possible prior to the due date.

Credit unions with internet access should upload the Call Reports directly to the NCUA using the eSend feature contained in the 5300 software. The eSend option allows the call report data to be transferred electronically to the NCUA. The division receives notices and electronically validates the data.

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Net Worth Adequacy

The division has received questions and comments in the last year regarding our stance on the minimum net worth a credit union must maintain. All credit unions insured by the NCUA are governed by NCUA Rules & Regulations, Part 702, Prompt Corrective Action (PCA).

The division does not have a minimum required net worth level above that which PCA requires. PCA supervisory actions from the division will not apply until a credit union's Net Worth to Total Assets Ratio (NWR) falls below 7%. Clearly, all things equal, a credit union with a NWR of 8% could be described as more safe and sound than one with a NWR of 7%, and examination reports could make comments as such. However, no administrative actions will be placed on credit unions simply for falling below an 8% NWR.

Information Systems and Technology

Due to emerging trends and the velocity of improving technology, the division will continue to improve our Information Systems and Technology (IS&T) examination program. It is important to note that the division will not be performing a technical audit, rather a review of management, compliance, and internal controls. Although this review will be independent from normal examination procedures, it will likely be in conjunction with the normal examination.

Examiner Brad Schone (St. Louis) will be the lead examiner. For 2006, the goal is to have Brad complete 8-10 IS&T examinations of credit unions with $50 million or less in assets. Future newsletters will address this area in greater detail. Should any credit union have questions regarding any area of IS&T from a regulatory standpoint, please contact our office for assistance.

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